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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30, Chapters 50, 60, 80 and 120
Regulation title	Amount, Duration and Scope of Services, Methods and Standards for Establishing Payment Rates – Other Types of Care, and Waivered Services
Action title	Substance Abuse Treatment Services
Document preparation date	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apr.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Preamble

The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at COV 2.2-4011(i) as discussed below.

The 2007 Appropriation Act, Item 302, PPP requires that the DMAS develop amendments to the State Plan for Medical Assistance to provide coverage of substance abuse treatment services for children and adults, effective July 1, 2007.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Amount, Duration and Scope of Services, Methods and Standards for Establishing Payment Rates – Other Types of Care, and Waivered Services Amount, Duration, and Scope of Services: Substance Abuse Treatment Services (12 VAC 30-50, 30-80 and 30-120) and also authorize the initiation of the permanent regulatory promulgation process provided for in § 2.2-4007.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Appropriation Act, Item 302, PPP requires that DMAS amend the State Plan for Medical Assistance to provide coverage of substance abuse treatment services for children and adults, effective July 1, 2007. The services will include emergency services; evaluation and assessment; outpatient services, intensive outpatient services, targeted case management; day treatment and opioid treatment services. Substance abuse services, with the exception of residential and day treatment services for pregnant and post partum women are not currently a part of the State Plan. The addition of these services will fill a gap in the continuum of care for Medicaid enrollees.

MEDALLION Primary Care Case Management (PCCM) recipients will have substance abuse services covered by Medicaid. These services are NOT subject to required referrals by the primary care physician. Medallion II recipients who are enrolled in an MCO will have outpatient services (excluding Intensive Outpatient Services) and assessment and evaluation services covered by the MCOs. All other mandated substance abuse services to be covered (Emergency Services (Crisis), Intensive Outpatient Services, Day Treatment Services, Opioid Treatment Services, and Substance Abuse Case Management services) will be carved-out of the MCO and covered by DMAS.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid

authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

New regulations are proposed for substance use treatment for emergency services; evaluation and assessment; outpatient services, intensive outpatient services, targeted case management; day treatment and opioid treatment services for children and adults. The new services are modeled after existing mental health services for consistency. The new services will provide needed resources persons with substance use disorders. Additionally, studies have demonstrated that Medicaid reimbursement for substance abuse treatment produces savings for both public safety and health. There are no anticipated issues that will need to be addressed in the permanent final regulations.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	12 VAC 30-50-141	N/A.	Provides a detailed description of outpatient substance abuse services, including service limitations, provider requirements and standards for medical necessity determinations.
	12 VAC 30-50-151	N/A	Provides a detailed description of other provider types who may provide outpatient substance abuse services, including service limitations and provider requirements.
	12 VAC 30-50-181	N/A	Provides a detailed description of provider types who may provide substance abuse services in a community mental health clinic setting.
	12 VAC 30-50-228	N/A	Provides a detailed description of community substance abuse treatment services, including crisis intervention, day treatment services in non-residential settings, intensive outpatient services, and opioid treatment services.
	12 VAC 30-60-250	N/A	Provides a detailed description of the utilization review as applied to community substance abuse treatment services, including medical necessity criteria for enrollees to receive these services as well as provider qualifications.
	12VAC30-60-255		Provides a detailed description of case management services for adults who have an Axis I substance-related disorder, including a definition of the services, service limits and provider qualifications.

	12VAC30-80-32		Reimbursement for substance abuse services: describes rate methodologies for substance abuse service providers, based upon Agency fee schedule and existing fees applied to current providers.
12VAC30-120-310.		Services exempted from MEDALLION referral requirements.	Edits language to cover all substance abuse referrals.
12 VAC 30-120-380		Medallion II MCO responsibilities	Adds language making Managed Care Organizations responsible for outpatient services (excluding intensive outpatient services), and Assessment and Evaluation for substance abuse treatment.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The Appropriations Act mandates coverage for the new services, so no other options were considered. Stakeholders were involved in the development of the proposed emergency regulations. Whether or not to include intensive outpatient services within the responsibility of the Managed Care Organizations (MCOs) was considered. The benefit would be that MCOs have established provider networks. The negative was that this would create a different structure for substance abuse treatment reimbursement than for mental health day treatment. It was decided to keep the structure as similar as possible for both mental health and substance abuse treatment. The impact of this decision will be monitored. It is possible that intensive outpatient services may be included as a responsibility of the MCOs at a later date.

A decision was made to cover opioid treatment as a distinct outpatient service due to the special need for this service. The intent of the Budget language is to cover this service, but it could have been covered as a part of outpatient services. By covering it separately, it ensures that the services needed by this special population will be met. These clients require daily visits and the proposed regulations were developed to meet the needs of this population.

Under the MEDALLION program, the addition of these covered services should be seamless. These services will be reimbursed by fee-for-service and, as an extension of the previous regulation which was limited to substance abuse coverage for pregnant women, no referrals to service providers by the primary care physician are required.

Under the Medallion II program, the decision of what to carve-out and what to have covered by the MCO was based on current coverage criteria for community mental health services. The MCOs will be responsible for coverage of assessment and evaluation, and outpatient services (excluding Intensive Outpatient Services). The substance abuse services to be carved-out of MCO capitation fees and covered by DMAS under fee-for-service Medicaid include: emergency

services (crisis), intensive outpatient services, day treatment services, substance abuse case management services, and Opioid Treatment services.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

These changes strengthen the authority and rights of parents in the nurturing, and supervision of their children by providing a new resource to them to improve the health of their children with substance use disorders. By improving health status these new services encourage children and adults to address substance use disorders and improve self-sufficiency, self-pride, and to assume responsibility for oneself, one's spouse, and one's children and/or elderly parents. It may strengthen the marital commitment by helping an individual address substance use disorders. It may help increase family income by enabling the individual to sustain recovery and employment.